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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7 TED L. CRESS,

8 Plaintiff,

9 v.

10 SNOHOMISH COUNTY SUPERIOR COURT,  
et al.,

11 Defendants.

Case No. C17-420 RSL-BAT

**REPORT AND  
RECOMMENDATION**

12 Ted L. Cress, who is currently incarcerated at the Washington Corrections Center, filed a  
13 civil rights complaint against the Snohomish County Superior Court, Snohomish County  
14 Public Defender Association, Snohomish County Corrections, and Niel Freedman of the Public  
15 Defender Association. Dkt. 6. Mr. Cress alleged that the court and public defenders are failing  
16 to respond to his motion for new counsel and provide him with discovery in his state criminal  
17 case. Mr. Cress also alleged that unidentified people at SCC took away his reading magnifier (he  
18 claims to be blind), will not allow him to have a job at the jail, refuse his request to move to a  
19 lower bunk on the upper tier, and stole his medication. *Id.*

20 The Court declined to serve the complaint because Mr. Cress failed to name a proper  
21 defendant, his claims against the state public defender and state governmental entities were  
22 subject to dismissal, and his challenge to his ongoing state criminal proceedings is barred by the  
23 *Younger* abstention doctrine. Dkt. 7.

1 The Court granted Mr. Cress leave to file an amended complaint to cure, if possible, the  
2 noted deficiencies. *Id.* Mr. Cress filed an Amended Complaint on April 18, 2017. The entirety  
3 of his amended claim is as follows:

4 Correction to Order Granting Application: Line 20 & 16 about medication is  
5 wrong, I wasn't on medication and wasn't in right mind and still not had Mental  
6 E-val as I wasn't in right mind to register or for registering as medication was  
stolen from me on the streets. Courts not understanding about blindness or my  
condition.

7 Dkt. 8, p. 3. Because Mr. Cress has failed to state a cognizable § 1983 claim, the undersigned  
8 recommends that the Court dismiss the complaint without prejudice.

### 9 DISCUSSION

10 To sustain a civil rights action under § 1983, a plaintiff must show (1) he suffered a  
11 violation of rights protected by the Constitution or created by federal statute, and (2) the  
12 violation was proximately caused by a person acting under color of state or federal law. *See*  
13 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

#### 14 A. Government Entities and Public Defender as Parties

15 Mr. Cress has failed to name a proper defendant. A state public defender performing  
16 traditional lawyer functions is not a state actor. *Polk County v. Dodson*, 454 U.S. 312, 324-25,  
17 102 S.Ct. 445, 70 L.Ed. 509 (1981); *Miranda v. Clark County*, 319 F.3d 465, 468 (9<sup>th</sup> Cir. 2002).  
18 In addition, government entities such as the Snohomish County Superior Court, Snohomish  
19 County Public Defender Association, and Snohomish County Corrections are not proper parties  
20 to a § 1983 complaint. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). While Snohomish  
21 County is a municipality that can be sued under § 1983, *Monell v. New York City Dept. of Social*  
22 *Services*, 436 U.S. 658, 690 (1978), Mr. Cress fails to allege how the County's employees or  
23 agents acted through an official custom, pattern or policy that permits deliberate indifference to,

1 or violates, his civil rights or that the County ratified the unlawful conduct. *Monell*, 436 U.S. at  
2 690–91.

### 3 **B. Challenge to Ongoing State Criminal Action**

4 Even assuming a proper defendant could be named, Mr. Cress may not challenge the  
5 propriety of ongoing state criminal proceedings in a 42 U.S.C. § 1983 lawsuit. Federal courts  
6 will not intervene in a pending criminal proceeding absent extraordinary circumstances where  
7 the danger of irreparable harm is both great and immediate. See *Younger v. Harris*, 401 U.S. 37,  
8 45, 46 (1971). The *Younger* abstention doctrine requires that a district court dismiss a federal  
9 action if state proceedings are (1) ongoing, (2) implicate important state interests, and (3) afford  
10 the plaintiff an adequate opportunity to raise the federal issue. *Columbia Basin Apartment Ass’n*  
11 *v. City of Pasco*, 268 F.3d 791, 799 (9th Cir. 2001) (citation omitted). All of the *Younger* criteria  
12 appear to be satisfied here. The proceedings are ongoing, involve a criminal prosecution that  
13 implicates important state interests, and there is nothing to indicate that Mr. Cress cannot raise in  
14 his criminal case the same claims he raises here, and there is no danger of great and immediate  
15 irreparable harm. Therefore, it appears that this action would unduly interfere with the state  
16 criminal proceeding in a way *Younger* disapproves.

### 17 **C. Conditions of Confinement at SCC**

18 With regard to the remainder of Mr. Cress’s claims (that he is being denied use of a  
19 magnifier to read and his request for a different bunk assignment)<sup>1</sup>, he has failed to plead  
20 sufficient facts from which the Court may determine whether he has stated a viable § 1983 claim  
21 and has failed to name a liable party. Mr. Cress was advised to file an amended complaint  
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23 <sup>1</sup> Based on the amended complaint, the Court assumes that Mr. Cress is no longer alleging that his medications were wrongfully taken from him by anyone at the Snohomish County Jail.

1 containing short, plain statements telling the Court: (1) the constitutional right he believes was  
2 violated; (2) the name of the person who violated the right; (3) exactly what that person did or  
3 failed to do; (4) how the action or inaction of that person is connected to the violation of  
4 plaintiff's constitutional rights; and (5) what specific injury plaintiff suffered because of that  
5 person's conduct. He has failed to do so.

### 6 CONCLUSION

7 Mr. Cress was granted leave to file an amended complaint to cure the deficiencies of his  
8 original complaint. His amended complaint suffers from similar deficiencies. Accordingly, the  
9 Court recommends that this action be **DISMISSED without prejudice for failure to state a**  
10 **claim.** A proposed order accompanies this Report and Recommendation. Any objections to this  
11 Recommendation must be filed by **Thursday, June 1, 2017.** The Clerk should note the matter  
12 for **Monday, June 5, 2017** as ready for the District Judge's consideration if no objection is filed.

13 If plaintiff files an objection, he must note the matter for the Court's consideration 14  
14 days from the date the objection is filed and served. Objections shall not exceed seven (7) pages.  
15 The failure to timely object may affect the right to appeal.

16 DATED this 11th day of May, 2017.

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18 BRIAN A. TSUCHIDA  
19 United States Magistrate Judge  
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